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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,077	12/16/2005	Gery Bernard Marie Dambricourt	05-531	3908
34704 7590 07/07/2009 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
KASHNIKOW, ERIK				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
07/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/543,077

Applicant(s)

DAMBRICOURT, GERY BERNARD
MARIE

Examiner

ERIK KASHNIKOV

Art Unit

1794

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 23 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: _____
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: The reply does not place the application in condition for allowance for the following reason. In regards to the double patenting rejection, Examiner recognizes that the copending application is silent regarding the dispersion factor (Kd), but as clearly pointed out in the rejection, and in the body of the action (paragraph 28) it would be obvious to one of ordinary skill in the art at the time of the invention to modify this property so that an optimal rigidity for the object is obtained. It is further pointed out that the first two lines of the '935 claim 32 mention tubes resistant to stress tracking and forming a strong water barrier. As mentioned in the last office action the Examiner is relying on optimization and not inherency in the double patenting rejection. In regards to Applicants arguments regarding the 112 rejections: In regards to claim 37 the wording of the claims is still unclear, examiner suggest rewording the claim along the lines of "the Kd should be lower or equal to 3 if polyethylene is present and lower or equal to 2.2 if polyethylene is not present". In regards to claims 49 and 55, Examiner realizes that these two claims are claiming different properties, however the two claims as written are not claiming the MFI of the polymers in the claims they are dependant upon but on the tube as a whole, as such the claims are confusing and indefinite. In regards to paragraph 7 of the office action as one of ordinary skill in the art would not recognize "centrifugal radial tension" as being the same as "radial expansion" it is requested that the term be replaced to clear up the uncertainty present in the claims. In regards to the 103 rejection of the claims, in regards to Applicant's arguments that neither Dambricourt nor Johnson et al. explicitly state the desired dispersion factor, Examiner agrees that it is not specifically stated however that is why Examiner stated it would be obvious to one of ordinary skill in the art at the time of the invention to optimize this factor in order to obtain an article with the optimal rigidity. Further Examiner recognizes that the equation is a constraint and not a result, however it would be within the ability of one of ordinary skill in the art to use methods known to one of ordinary skill in the art to arrive at a fully flexible tube which fits within the constraints provided in the equation without using the equation. In regards to Applicant's arguments regarding the fact that it would be "far from obvious" that one of ordinary skill in the art would have combined the teachings of Dambricourt and Johnson et al. and arrived at the present invention. Examiner respectfully disagrees. Examiner has presented to references which are analogous art and given motivation to combine them, and as such arguments that one of ordinary skill in the art at the time of the invention would not have arrived at the present invention are not persuasive. Applicants statement that the high rigidity of polypropylene should in principle limit its use for the fabrication of flexible tubes, allows that polypropylene may be used for the fabrication of flexible tubes (limit does not mean unsuitable) and further this statement is a conclusory statement with no evidence or data presented, and as does not overcome the rejection of record. In regards to Applicant's arguments regarding the Nishikawa and Doherty references, Examiner notes that while they do not disclose all the features of the present claimed invention, they are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention. In re Nievelt, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), In re Keller 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references. Examiner also points out that Nishikawa et al. is not used to teach specific polymers, and is only being used to teach the specific formation of the neck, specifically the a ring of material around the neck